



**D.C. Criminal Code Reform Commission**  
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**Advisory Group Memorandum #14**

**To:** Code Revision Advisory Group  
**From:** Criminal Code Reform Commission (CCRC)  
**Date:** December 21, 2017  
**Re:** Third Draft of Report #2, Basic Requirements of Offense Liability

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This Advisory Group Memorandum #14 supplements the Third Draft of Report #2, *Recommendations for Chapter 2 of the Revised Criminal Code—Basic Requirements of Offense Liability* (Third Draft of Report No. 2). It provides a general overview of the Third Draft of Report No. 2 and discusses a few particular changes reflected in the Report. This Memorandum is accompanied by an appendix with a redlined version of RCC § 22A-206.

**I. OVERVIEW OF THIRD DRAFT OF REPORT NO. 2**

The scope of the Third Draft of Report No. 2 is narrow. It is comprised of draft legislation and commentary addressing RCC § 22A-206, Hierarchy of Culpable Mental States. The only revisions to this provision and accompanying commentary are stylistic, organizational, and/or clarificatory. They are primarily based upon consensus feedback from the members of the agency’s Advisory Group. The goal of this draft is to ensure that both the legislative text and the commentary underlying the culpable mental state definitions are clear, consistent, and uniform as the CCRC begins to issue its recommendations on offenses against persons. This draft does not address substantive issues relevant to RCC § 22A-206 raised by Advisory Group members, or any other recommendation contained in the First or Second Draft of Report No. 2. A Fourth Draft of Report No. 2, to be released at a future date, will address these substantive considerations.

**II. THREE SPECIFIC REVISIONS**

There are three notable revisions to RCC § 22A-206, Hierarchy of Culpable Mental States. The first is that the definitions of each culpable mental state—purpose, knowledge, intent, recklessness, and negligence—as to a result element omit any reference to “one’s” conduct. For example, the definition of knowledge as to a result reflected in the Second Draft of Report No. 2 reads: “A person acts knowingly with respect to a result when that person is aware that **one’s conduct** is practically certain to cause the result.” In contrast, the revised definition of knowledge reflected in the Third Draft of Report No. 2 reads: “A person acts knowingly with respect to a result when that person is aware that **conduct** is practically certain to cause the result.”

The latter, more general reference to conduct better reflects the fact that, in some instances, a defendant's culpable mental state will be proven by reference to his or her state of mind with respect to the result's caused by *another person's conduct* (not his or her own). For example, accomplice liability may entail proof of a defendant's culpable mental state pertaining to the results caused by the *principal's conduct*, while solicitation liability may entail proof of a defendant's culpable mental state pertaining to the results caused by the *solicitee's conduct*.

The second notable revision is the separate codification of the definitions of knowledge and intent. For example, in the Second Draft of Report No. 2, the definitions of knowledge and intent are combined in a single subsection (b), which reads:

(b) KNOWLEDGE & INTENT DEFINED.

(1) A person acts knowingly with respect to a result when that person is aware that one's conduct is practically certain to cause the result.

(2) A person acts knowingly with respect to a circumstance when that person is practically certain that the circumstance exists.

(3) A person acts intentionally with respect to a result when that person believes that one's conduct is practically certain to cause the result.

(4) A person acts intentionally with respect to a circumstance when that person believes it is practically certain that the circumstance exists.

In contrast, these definitions are separately codified in the Third Draft of Report No. 3 as follows:

(b) KNOWLEDGE DEFINED.

(1) A person acts knowingly with respect to a result when that person is aware that conduct is practically certain to cause the result.

(2) A person acts knowingly with respect to a circumstance when that person is practically certain that the circumstance exists.

(c) INTENT DEFINED.

(1) A person acts intentionally with respect to a result when that person believes that conduct is practically certain to cause the result.

(2) A person acts intentionally with respect to a circumstance when that person believes it is practically certain that the circumstance exists.

This non-substantive, organizational revision is recommended to enhance the clarity/readability of these definitions.

A final notable clarification involves modification of the general provision entitled “Proof of Greater Culpable Mental State Satisfies Requirement for Lower” in the Third Draft of Report No. 2. Among other minor revisions, this general provision incorporates a new subsection ((e)(3)), which states that: “When the law requires intent as to a result or circumstance, the requirement is also satisfied by proof of knowledge or purpose.” This statutory principle, as well as the other minor revisions to this general provision, are intended to clarify the place of intent in the culpable mental state hierarchy in a manner that is consistent with the considerations/analysis previously provided in the Second Draft of Report No. 2.

APPENDIX: REDLINED VERSION OF RCC § 22A-206

§ 206 HIERARCHY OF CULPABLE MENTAL STATES

(a) PURPOSE DEFINED.

(1) A person acts purposely with respect to a result when that person consciously desires ~~that one's conduct~~ to cause the result.

(2) A person acts purposely with respect to a circumstance when that person consciously desires that the circumstance exists.

(b) KNOWLEDGE ~~& INTENT~~ DEFINED.

(1) A person acts knowingly with respect to a result when that person is aware that ~~one's~~ conduct is practically certain to cause the result.

(2) A person acts knowingly with respect to a circumstance when that person is practically certain that the circumstance exists.

~~(3)~~ (c) INTENT DEFINED.

(1) A person acts intentionally with respect to a result when that person believes that ~~one's~~ conduct is practically certain to cause the result.

(2) A person acts intentionally with respect to a circumstance when that person believes it is practically certain that the circumstance exists.

(d) RECKLESSNESS DEFINED. ~~“Recklessly” or “recklessness” means:~~

(1) ~~With~~ A person acts recklessly with respect to a result, ~~being when:~~

~~(A) That person is~~ aware of a substantial risk that ~~one's~~ conduct — will cause the \_\_\_\_\_ result; ~~and~~

~~(B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.~~

(2) ~~With~~ A person acts recklessly with respect to a circumstance, ~~being when:~~

~~(A) That person is~~ aware of a substantial risk that the \_\_\_\_\_ circumstance exists; ~~and~~

~~(B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.~~

(3) ~~In order to act recklessly as to a result or circumstance, the person's conduct must grossly deviate from the standard of care that a reasonable person would observe in the person's situation.~~

(4) ~~In order to act recklessly as to a result or circumstance~~ A person's reckless conduct occurs "under circumstances manifesting extreme indifference" to the interests protected by an offense, ~~when~~ the person's conduct ~~must constitute~~ constitutes an extreme deviation from the standard of care that a reasonable \_\_\_\_\_ person would observe in the person's situation.

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(de) NEGLIGENCE DEFINED. "Negligently" or "negligence" means:

(1) ~~With~~ A person acts negligently with respect to a result, ~~failing to perceive when:~~

\_\_\_\_\_ (A) That person should be aware of a substantial risk that ~~one's~~ conduct will \_\_\_\_\_ cause the result-; and

\_\_\_\_\_ (B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.

(2) ~~With~~ A person acts negligently with respect to a circumstance, ~~failing to perceive when:~~

\_\_\_\_\_ (A) That person should be aware of a substantial risk that the \_\_\_\_\_ circumstance \_\_\_\_\_ exists-; and

(3) ~~In order to act negligently as to a result or circumstance, the~~ \_\_\_\_\_ (B) ~~The~~ person's conduct ~~must grossly deviate~~ deviates from the standard of care that a \_\_\_\_\_ reasonable person would observe in the person's situation.

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(ef) PROOF OF GREATER CULPABLE MENTAL STATE SATISFIES REQUIREMENT FOR LOWER.

(1) *Proof of Negligence.* When the law requires negligence as to a result or circumstance, the requirement is also satisfied by proof of recklessness, intent, knowledge, or purpose.

(2) *Proof of Recklessness.* When the law requires recklessness as to a result or circumstance, the requirement is also satisfied by proof of intent, knowledge, or purpose.

~~(3)~~ *Proof of Intent.* When the law requires intent as to a result or circumstance, the requirement is also satisfied by proof of knowledge or purpose.

(4) *Proof of Knowledge.* When the law requires knowledge as to a result or circumstance, the requirement is also satisfied by proof of purpose.